

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)
Plaintiff,)

v.)

HERBERT WHALEN,)
a/k/a "Bert Whalen")
Defendant.)

Criminal Number: 2:19-cr-00839-MCA

MOTION FOR APPROVAL OF SUBPOENAS

Comes now Defendant, Herbert Whalen, by counsel, John L. Tompkins, and respectfully requests the approval of the ten subpoenas filed contemporaneously with this Motion. In support, the Defendant shows as follows:

1. In conducting mutual disclosures and while conferring with the Government regarding the issues in this case, the Defense has identified several documents/business records that will be useful during potential negotiations and in trial, if necessary. Specifically, these records include utility usage history on specific properties that the Government is/has investigating/investigated, for finite time periods covered by specific leases.
2. The Defense is requesting a return date of 30 days from the date the receiving entity receives service of these subpoenas via certified mail. This will allow the requested documents to be available to the parties during trial preparation and case negotiations, in addition to being available for trial if needed.
3. The Defense seeks these records pursuant to Federal Rule of Criminal Procedure 17(c), via subpoena.
4. The Court should approve these subpoenas because:

- a. The records sought are relevant to the issues around occupancy of the properties they pertain to and are standard business records, a common form of evidence.
 - b. The Defense cannot obtain these records from other sources using due diligence because complete utility records are only maintained by utility companies. Even the consumers receiving the bills would not be expected to maintain complete billing histories for 2-3 years.
 - c. These documents are essential for the Defense's trial preparation because they are from an unbiased source and contain information that uniquely and efficiently allows the Defense to present evidence of occupancy, even if some occupant/live witnesses cannot be located or are unavailable for a trial to be held in New Jersey. (All properties are located in Indianapolis, Indiana).
 - d. These subpoenas are issued in good faith, and are not generalized requests. Each subpoena pertains to a property that is already part of the Government's case, and is limited in time to only the periods covered by challenges leases.
5. Each subpoena complies with the law. The Defense has provided sample proposed subpoenas for one of the properties with a statement of purpose and intent to file all attached subpoenas to the Government. The Defense will provide copies of all responsive materials to the Government.

For these reasons, the Defense requests the Court approve the issuance of the attached subpoenas pursuant to Federal Rule of Criminal Procedure 17(c).

Respectfully submitted,

/s/ John L. Tompkins
John L. Tompkins, #19597-49
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the applicable parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ John L. Tompkins

John L. Tompkins

TOMPKINS LAW

608 E. Market Street

Indianapolis, IN 46202

Telephone: (317) 631-6866

FAX: (317) 685-2329